BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	
REQUEST BY AIRTRAX FOR AMENDMENT OF THE COMMISSION'S RULES TO PROVIDE STANDARDS FOR "SPECIAL SIGNAL" USE OF LINE 22 OF THE TELEVISION BROADCAST SIGNALS	MM 95-42 RM No. 7567

To: The Commission

OPPOSITION TO PETITION FOR RULEMAKING AND MOTION TO DISMISS

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SUMMARY

A.C. Nielsen Co. ("Nielsen") opposes the Petition for Rulemaking filed by Airtrax on April 9, 1990, and placed on Public Notice on January 14, 1991 (the "Petition"). Airtrax's Petition should be dismissed on procedural and substantive grounds.

The Petition fails to comply with Section 1.401(c) of the Commission's Rules. Fundamentally, Airtrax's Petition fails to articulate a real problem that merits administrative resolution. In other cases, the Commission has dismissed petitions for rulemaking similar to that filed by Airtrax, and the Commission should dismiss Airtrax's Petition as well.

Airtrax advocates the formulation of some sort of undefined compatibility standard for users of line 22, but it has not demonstrated a need for such a standard. Although Airtrax complains of "incompatibility," i.e., the fact that only one party can encode on line 22 of a particular program at a given time, no other users of line 22 have complained of any adverse effects of this "incompatibility," such as overwriting. As a practical matter, it is unlikely that such overwriting will occur because a party must obtain the consent of the appropriate party with respect to any program or commercial material it seeks to encode. Adoption of a uniform standard would only retard the growth of competition among users of line 22 which has characterized the marketplace. As the Commission has recognized in other contexts, forbearance from regulation will continue to spur innovation and the emergence of competing service providers.

Airtrax's Petition is merely an attempt to enlist Commission assistance for its own ailing business. This is not an appropriate objective for regulatory action.

The state of competition in the verification services market is quite vigorous with competing providers using line 22 as well as alternative technologies. Airtrax's assertion that service providers are limited to the use of line 22 therefore mischaracterizes the marketplace and suggests a problem that does not exist.

If some sort of standard is desirable, the industry will develop it without governmental intervention. The Commission has recognized the role of the private sector in developing standards in other contexts, and it should do so again here.

Airtrax asserts a number of broad regulatory objectives which it would like to see accomplished through the requested rulemaking proceeding; but these objectives either are part of the existing regulatory regime already (and have, for example, been incorporated in Nielsen's own Temporary Authority), or the need for them has not been demonstrated.

Finally, a grant of Airtrax's Petition would delay the issuance of permanent authority to Nielsen to operate on line 22 and therefore would harm the public interest, which Airtrax itself has recognized benefits from Nielsen's use of the line. Other present and potential users of line 22 will be similarly harmed by delay.

TABLE OF CONTENTS

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In the Matter of	)	
	)	
REQUEST BY AIRTRAX FOR AMENDMENT	)	
OF THE COMMISSION'S RULES TO PROVIDE	)	
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LINE 22 OF THE TELEVISION BROADCAST	)	
SIGNALS	)	
	)	

To: The Commission

OPPOSITION TO PETITION FOR RULEMAKING AND MOTION TO DISMISS

A.C. Nielsen Company ("Nielsen"), through its attorneys and pursuant to Section 1.405(a) of the Commission's Rules, 47 C.F.R. § 1.405(a) (1990), hereby opposes the Petition for Rulemaking ("Petition") filed April 9, 1990, by Airtrax, a California general partnership ("Airtrax"), and placed on Public Notice on January 14, 1991. For the following reasons, Airtrax's Petition should be dismissed.

I. AIRTRAX'S PETITION SHOULD BE DISMISSED BECAUSE OF ITS PROCEDURAL INFIRMITIES

1. Airtrax's Petition fails to satisfy the Commission's requirements for initiation of a rulemaking proceeding. Section 1.401(c) of the Commission's Rules, 47 C.F.R. § 1.401(c) (1990), requires petitions for rulemaking to "set forth the text or substance of the proposed rules . . . together with all facts, views, arguments and data deemed to support the action requested, and [to] indicate how the interests of [the] petitioner will be

affected." Airtrax's Petition fails to specify the rules it advocates, and instead merely offers broad objectives Airtrax would like to see accomplished through the administrative process. See Petition at 7. Additionally, the Airtrax Petition fails to explain how Airtrax's interests would be affected by a Commission grant of its request.

2. The procedural infirmities inherent in Airtrax's Petition are not simply technical. The failure to propose a rule in any form makes it very difficult to evaluate the potential impact of any rule on the competitive state of the existing market, future technological developments in this area, and present and future service providers and users. More importantly, this failure exposes the Petition's fundamental flaw: there is no "real-world" problem that warrants resolution through the administrative rulemaking process. Solely to gain a competitive edge by delaying or restricting Nielsen's right to use line 22,[1/] Airtrax has concocted an imaginary problem, with

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[1/] Airtrax seeks the Commission's intervention to prop up its own ailing business, which has suffered from a lack of demand - a lack for which no amount of regulation can or should compensate. Airtrax blames Nielsen for its problems, claiming that

> [t]he use of the Nielsen technology on Line 22 [instead of its own] will . . . result from . . . the desirability of Nielsen's program verification service, especially when coupled to the ability of the service to help automate viewer ratings.

Petition at 6. Airtrax's myopic focus on Nielsen ignores the rest of the marketplace. As discussed in Section III, infra, the present competitive environment has spawned a number of

(continued...)

no tangible manifestations (e.g., no instances of unauthorized overwriting by Nielsen or other users of line 22), and proposes that the Commission formulate a "solution" which Airtrax itself is unable to posit. Airtrax's Petition should be dismissed because it fails to define the rules Airtrax advocates or to discuss the effects of any new rules on Airtrax's interests.

3. Airtrax's Petition should also be dismissed because Airtrax has failed to support its request with facts, data, and arguments, as required by Section 1.401(c) of the Commission's Rules, 47 C.F.R. § 1.401(c) (1990). As demonstrated in Section III below, Airtrax's request is based solely on speculation and unsupported statements, falling far short of what the Commission requires before embarking on an expensive and time-consuming rulemaking proceeding.[2/]

4. In TV Channel Assignment for Newark, New Jersey, 29 R.R.2d 1473 (1974), the Commission affirmed the dismissal of a petition for rulemaking which, like Airtrax's, failed to make a

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[1/](...continued)
competitors of Nielsen and Airtrax; however, if inefficient firms (such as Airtrax) are resuscitated by regulatory intervention, as Airtrax advocates, the marketplace will cease attracting new competitors, and inefficiency will be rewarded at the expense of innovation. Airtrax's competitive woes are due to the natural operation of market forces which the Commission should allow to continue.

[2/] If Airtrax's Petition is granted, the Commission and the participating parties will expend substantial time and resources only to discover that no problem exists, and that marketplace dynamics and existing regulatory policies which have worked for years will continue to work and to serve the public interest.

prima facie showing of the need for the requested rulemaking proceeding. In the Newark proceeding, the Commission found that the petition suffered from "a total lack of substantive material," and was based solely on "conjecture or mere general observation." 29 R.R.2d 1474. Similarly, Airtrax has demonstrated no adverse consequences flowing from Nielsen's and others' use of line 22 under the current regulatory regime. It has been unable to identify even a single instance of code overwriting or other "harm" on which to base its Petition for rather extraordinary relief: the creation of unnecessary and unjustified new rules. The Commission's characterization of the Petition dismissed in Newark applies with equal force to Airtrax's Petition and likewise dictates that the Petition be dismissed. See Cable Television Syndicated Program Exclusivity and Carriage of Sports Telecast, 56 R.R.2d 625, 632 (1984) (petitioner's failure adequately to support or justify initiation of rulemaking proceeding fatal to petition).

II. INSTITUTION OF A RULEMAKING PROCEEDING AT THIS TIME WOULD BE PREMATURE BECAUSE NO NEED FOR RULES HAS BEEN DEMONSTRATED

5. Even if Airtrax's Petition were procedurally and technically sound, it should be dismissed for failing to demonstrate a need for the regulatory action it advocates. Airtrax asserts that there is a need for some sort of vague "open standard" for users of line 22 of the active video signal, Petition at 5, and predicts that the marketplace will not develop

an open standard without regulatory intervention. Id. In support of these claims, Airtrax hypothecates that Nielsen's position in the market, the desirability of Nielsen's Automated Measurement of Lineup (AMOL) service, and "the likelihood that many licensees will utilize" Nielsen's service, will "force" users of line 22 to make their systems "compatible" with Nielsen's system,[3/] which Airtrax mischaracterizes as employing "older technology."[4/] Id. Airtrax's position is untenable.

6. Airtrax's premise that there is a need for an "open standard" for users of line 22 is, at best, vague[5/] and, at

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3/ As demonstrated in Section III below, a number of formidable competitors, using line 22 as well as other technologies and signal-carrying media, have emerged and achieved significant inroads in this market without government intervention. Such competition should be permitted to continue growing unimpeded by regulation.

4/ Airtrax's characterization of the technology used by Nielsen as "older" and "less advanced than that of Airtrax," Petition at 5-6, is misleading. Nielsen's technology is older only because Nielsen was the first to pioneer the technology that other users of line 22 -- including Airtrax -- are now adopting. Merely because Nielsen was on the cutting edge in developing this technology is no reason to conclude that the technology does not serve the public interest. On the contrary, Airtrax acknowledges the "usefulness of [Nielsen's] service" and the "likelihood that licensees will utilize it." Petition at 5. Airtrax's characterization of Nielsen's technology as "less advanced" is subjective, unsupported, and, in any event, irrelevant; regardless of its technological advancement, Nielsen's system provides an avouchedly important service, and the marketplace will judge which service best meets users' needs. See infra, Section V.

5/ Even assuming a need for "compatibility," Airtrax's argument that the marketplace is incapable of achieving such a standard is unsupported and speculative, and ignores the history of voluntary development of compatibility in numerous other industries (e.g., the computer industry) without governmental intervention.

worst, intentionally diversionary and dilatory. More important, it ignores the fundamental fact that, if a compatibility "standard" is desirable, the industry will develop one on its own, as other industries have. Airtrax appears to advocate a system with a transparent architecture, such as that which exists for personal computers, where much of the commercially available software can be run on virtually any hardware. Contrary to Airtrax's mischaracterizations, however, the systems used by both Airtrax and Nielsen employ the same basic technology, and the systems used by Vidcode and others operate on the same principles. The only "incompatibility" between Nielsen's system and the system operated by any other user of line 22 is that only one party may encode on line 22 of a particular program or commercial at any given time. This in no way limits the discretion of the marketplace to determine, on a case-by-case basis, which user of line 22 will be permitted to encode a particular program at a particular time, nor does it limit the marketplace's discretion to demand the development of technology to enable multiple simultaneous encoding, if a need for such capability arises. Most importantly, it does not limit the ultimate discretion of broadcast licensees to decide whether or not to broadcast encoded material.[6/]

6/ Unlike some other systems, which employ proprietary codes that can only be interpreted using the appropriate proprietary software, Nielsen's codes can be and have been detected and interpreted by operators of other systems. In this sense,

(continued...)

7. Airtrax has neither asserted nor demonstrated a need for more than one party to encode and monitor the same program or commercial simultaneously; therefore, the existence of Airtrax's proclaimed "incompatibility" does not warrant regulatory action or the formulation of some sort of new standard.[7/] Indeed, adopting any standard or rules of uniformity would of necessity remove the incentive to development which the preservation of proprietary rights fosters. Airtrax has failed to demonstrate a need for new rules; and its Petition should be dismissed.

8. An additional basis for dismissal of Airtrax's Petition is that it ignores reality and advocates unnecessary and technology-stifling regulatory standardization. As demonstrated in the section below, numerous alternative technologies, some even utilizing line 22, have emerged that provide services competitive with Nielsen's service.[8/] Firms seeking to enter

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[6/](...continued)
Nielsen's is probably the most open, transparent system in operation.

[7/] It seems that Airtrax's real concern is with the potential incursion into its business by superior services. See supra note 1.

[8/] For example, one firm, Advertising Verification Inc., a/k/a AVI Technology, Inc., a/k/a Audio Verification, Inc. ("AVI"), uses a low-frequency audio carrier to carry verification code, which is encoded and decoded with the assistance of personal computers and external tuners. Another firm, VEIL-Interactive Systems, encodes the visible picture, using a custom-designed encoder. Broadcast Data Systems utilizes a passive, audio-based technology involving real time continuous pattern recognition of audio "signatures." Arbitron uses a passive system of real time continuous pattern recognition of both audio and video
(continued...)

the market and to provide a service similar to Nielsen's obviously are not limited to use of line 22, as Airtrax misleadingly suggests. And those firms wishing to use line 22 should not be hobbled in the development, testing, and deployment of more advanced uses of that line by artificial regulatory limitations (i.e., a "standard") that ultimately would impair competition by users of line 22 with users of alternative technologies. Forbearance from regulation in this area, as it has in other markets under the Commission's auspices, see, e.g., Competition in the Interexchange Marketplace, CC Dkt. No. 90-132 (Notice of Proposed Rulemaking) (release April 3, 1990),[9/] would help to stimulate competition and accelerate the

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[8/](...continued)
"signatures," known in the industry as the "MediaWatch BAR" system.

[9/] In CC Docket No. 90-132, the Commission wrote that it

> has long recognized that in effectively competitive markets, market forces can best further the goals of the [Communications] Act of efficient telecommunications services provided through adequate facilities at reasonable prices. The reason is quite simple: competitive forces best allocate society's resources, encourage innovation and efficiencies, and generally maximize benefits to consumers.

Competition in the Interexchange Marketplace, supra, at ¶ 97. In the case of verification services, as demonstrated in Section III below, the marketplace is characterized by vigorous competition among numerous service providers offering a variety of technologies. Consistent with the Commission's reasoning with respect to the interexchange market, obtrusive regulation in this area would only stunt the growth of competition and hamper the benefits that flow from such competition.

development and deployment of new technologies to provide new and more improved services to the public. The absence of regulatory interference with the marketplace has, as demonstrated below, already resulted in a market well populated with competitors.

III. AS THE COMMISSION HAS RECOGNIZED IN OTHER CONTEXTS, THE MARKETPLACE SHOULD BE RELIED ON TO DETERMINE THE NEED FOR A STANDARD AND TO DEFINE A STANDARD, IF NECESSARY

9. In other contexts, the Commission has concluded that it is better to rely on the private sector rather than regulation to develop standards. This policy is appropriate with regard to the use of line 22 as well.

10. In Inquiry Into The Need For A Universal Encryption Standard For Satellite Cable Programming, 5 F.C.C. Rcd. 2710 (released April 25, 1990) ("Satellite Cable Programming"), the Commission carried out the Congressional mandate expressed in the Satellite Home Viewer Act of 1988, Pub. L. No. 100-667, 102 Stat. 3949-59 (1988) (codified at 47 U.S.C. § 605(f), (g)), to determine whether the need exists for a universal standard for encryption of satellite cable programming intended for private viewing so as to permit decryption of such programming, and, if such a need exists, to promulgate a standard. Satellite Cable Programming, 5 F.C.C. Rcd. 2710. The Commission concluded that a mandatory encryption standard would not serve the public interest, reaffirming its earlier conclusions that:

> the market had settled on the Videocipher II (VC II) system as a de facto standard, . . . and that a

> mandatory standard would limit the incentives for innovation in encryption technology.

Id.[10/] The Commission rejected arguments that the creators of the VC II system were enjoying market power to the detriment of would-be competitors, reasoning that "[t]he whole purpose of the patent system is to allow the patent holder to reap profits to provide an incentive for innovation."[11/] Id. at 2717. The Commission found that the marketplace would determine whether the need for standards existed as well as what the standards would be, if such a need existed. Id. at 2718. The Commission should take the same position in this proceeding concerning the use by Nielsen or others in the market of their various technologies, any of which (like AMOL) are or may be subject to patent protection.

11. Similarly, in Petition for Notice of Inquiry to Consider Requirements for Shielding and Bypassing Civilian Communications Systems from Electromagnetic Pulse Effects, 1

10/ The Commission's finding that a mandatory standard could stifle technology enervates Airtrax's argument, Petition at 6-7, to the contrary.

11/ The Commission explained further that

> patent law allows patent holders wide discretion in the exploitation of those patents, so claims of abuse have a high but not insurmountable hurdle to overcome. Moreover, such claims, to be credible, must relate [the patent holder's] behavior to some significant harm to the public interest.

Id. 2717 (references omitted).

F.C.C. Rcd. 1126 (released December 12, 1986), petition for recon. dismissed, 2 F.C.C. Rcd. 2739 (1987) ("EMP Effects"), the Commission declined to initiate a standards-setting proceeding although it found the issues raised by the proponent to be "topical and important." The Commission noted that the petitioner failed to make a prima facie case for initiation of the requested proceeding, and that such a proceeding would be premature in light of the fact that the private sector was already studying the issues. The Commission concluded that it would permit the private sector to take the lead in development of a policy to address the issues raised by the petitioner. 1 F.C.C Rcd. at 1126.

12. History has shown that the private sector has developed various uses for line 22 without prodding from the government; the mere existence of numerous opponents of Nielsen and current testing with alternative suppliers (see discussion below) demonstrates this fact. Contrary to Airtrax's assertions, technology is developing and advancing in the absence of FCC intervention. As in EMP Effects, the Commission should permit the private sector to continue its work unimpeded by governmental interference.

13. The market in which Nielsen competes exemplifies the competition-driving forces that are working smoothly without regulatory tinkering. At least six firms offer verification services competitive with or similar to Nielsen's AMOL service,

including Arbitron (offering at least two systems with alternative technologies, the Linetrax system and the MediaWatch (BAR) system), Advertising Verification, Inc. (AVI), Audicom, VEIL-Interactive Systems, Vidcode, and Broadcast Data Systems. These competitors use a variety of different active (i.e., requiring encoding) and passive (i.e., usually pattern recognition) technologies. The active technologies utilize some or all of the video signal, or the audio signal, to transmit code. The passive technologies generally employ recognition of audio and/or video patterns. Thus, not only is the verification services marketplace characterized by a significant number of competing firms, it also is notable for the variety of alternative technologies that are available.

14. The growing presence in the marketplace of competing verification systems has been confirmed by recent press reports. For example, Warner Bros., one of the largest distributors of first-run series programming, has completed a month of tests of verification systems operated by Broadcast Data Systems (BDS), and Advertising Verification, Inc. (AVI). "Tracking the Elusive Barter Spot," Broadcasting (December 21, 1990) at 20 (hereinafter referred to as "Tracking") (appended hereto as Attachment 1). Neither of the systems utilizes line 22.

15. The AVI system encodes material that is to be tracked with low-frequency and low-decibel audio signals that are not audible to the human ear. Computers in each market detect the

signals, and communicate the verification data to individual syndicators or advertisers via modem. "Tracking" at 20-21. The BDS system uses a passive system that eliminates physical tape encoding by relying on computer recognition of audio patterns analogous to fingerprints. Id. at 21. BDS offers a similar service in over 75 radio markets, and announced plans in the fall of 1990 to begin serving television markets as well. The article reports that Nielsen's AMOL system and Arbitron's BAR system are two of the other systems that compete with AVI and BDS.

16. Which technologies ultimately prove to be most effective is a decision that the open marketplace should make. According to the Broadcasting article, representatives of the Advertiser-Supported Television Association, the Association of National Advertisers, and the nation's largest advertiser, Procter & Gamble, all have said that "their organizations would refrain from pushing an industry standard, but rather let the free market dictate which is the best format." "Tracking" at 21. The Commission should heed the consensus of these industry representatives, as they will be most directly affected by the decision in this proceeding. Airtrax's Petition accordingly should be denied.

IV. NEW RULES ARE NOT NECESSARY TO ACHIEVE PETITIONER'S STATED OBJECTIVES

17. Airtrax seeks to achieve five stated objectives[12/] through the requested rulemaking proceeding, none of which provides a sufficient basis for initiation of an expensive, time consuming administrative proceeding. First, Airtrax seeks to "maintain licensee discretion to broadcast the special signals" and to "ensure that the special signal does not degrade the broadcast signal." Petition at 7. These objectives were incorporated in the conditions to Nielsen's Temporary Authority, and presumably are basic conditions of all authorizations to use line 22 for special signals, see 47 C.F.R. §§ 73.646, 73.682(a)(21)(ii) (1990). Airtrax has made no showing whatsoever of any restriction of licensee discretion or degradation of the broadcast signal resulting from anyone's (including Nielsen's) use of line 22. Thus, there is no need for a rulemaking proceeding to ensure licensee discretion to broadcast special signals or to prevent degradation of the broadcast signal.

18. Airtrax also seeks rules that would "prohibit users of Line 22 from 'overwriting' other users without authority."

12/ As discussed supra, note 1, Airtrax also appears to have a hidden agenda of lessening the competitive threat to its own business posed by Nielsen's and others' line 22 services. Because such an objective is not an appropriate basis for initiation of an administrative rulemaking proceeding, Airtrax has concocted numerous other bases for the requested proceeding, all of which are collectively insufficient for the commencement of such a proceeding, as explained in the text above.

Petition at 7. This objective, again, was a condition of Nielsen's Temporary Authority, and presumably applies to all authorized users of the line. As Nielsen has argued in earlier submissions in DA 89-1060, unauthorized overwriting almost certainly will not occur in the normal course of business because an entity must obtain appropriate consents concerning the program or commercial before it may encode that material. Moreover, the absence of complaints from the other authorized users of line 22 who are operating in the market demonstrates that Nielsen's position all along has been correct, and there is no need for a rule of general applicability in this area.

19. Another objective Airtrax ostensibly seeks to achieve in the requested rulemaking proceeding is the formulation of "technical standards for an 'open' system which allows for alternative and multiple uses of Line 22." Petition at 7. As Nielsen has argued, supra paragraphs 6, 8, and 12-13, an open environment already exists in which multiple and alternative uses of line 22 can co-exist. The limited exceptions to this open environment have to date not proved to be problematic and none of Nielsen's opponents in the related proceeding has been able to identify even a single instance of harm to its (or anyone else's) interests as a result of the "incompatibility" complained of by Airtrax. Airtrax implies that a standard would stimulate other uses of line 22 but it ignores prior Commission findings and reality. The market has and will determine which uses of line 22

are desirable. The Commission has upheld a free market approach in other contexts, see supra pages 8-10, and should do so again here.

20. Finally, Airtrax seeks to ensure that "the use of Line 22 is broadcast related." Petition at 7. Although this objective is unclear, it is difficult to fathom a use of line 22 that would not be "broadcast related." Moreover, this objective already has been incorporated in Nielsen's and every other authorized user's Authority. Thus, this objective appears to be made of thin air, and, like all of Airtrax's other stated objectives, provides no basis for instituting a rulemaking proceeding.

V. THE INSTITUTION OF A RULEMAKING PROCEEDING OF ANY KIND WOULD FURTHER DELAY NIELSEN'S PROVISION OF AN IMPORTANT SERVICE

21. It is beyond dispute, even by Nielsen's litigious opponents in the related proceeding, that the service Nielsen seeks to provide using line 22 is a valuable service that is in demand by programmers, advertisers, broadcast licensees, and others. Even Airtrax itself has acknowledged the "usefulness of [Nielsen's] service when applied to ratings and the likelihood that licensees will utilize it." Petition at 5. Yet Airtrax would have the Commission delay permanently authorizing Nielsen to provide its important service merely to develop a "standard" which, if necessary, will be developed by the industry in due course. The adverse, dilatory effects on other present and

potential users of line 22 can not even be estimated. Airtrax's position is illogical and must be rejected. Further delay in the issuance of Nielsen's permanent authority to use line 22 while a rulemaking proceeding continues would be contrary to the public interest and Nielsen therefore requests that Airtrax's Petition be denied, and Nielsen's Request for Permanent Authority be granted forthwith.

For the foregoing reasons, Nielsen respectfully requests that the Petition for Rulemaking filed by Airtrax be dismissed and Nielsen's Request for Permanent Authority be granted immediately.

Respectfully submitted,

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show, by a half-hour.

KRON-TV San Francisco, the NBC affiliate, has also picked up the new Rivera magazine. But, instead of late night, where NBC is very strong, the station is looking at putting the show somewhere within the NBC daytime block, which continues to lag behind CBS and ABC.

"We've thought about putting it at noon or 12:30 p.m. or 11 a.m.," said David Salinger, director of programing and audience development, KRON-TV. "It is compatible with the type of programs we want to schedule in the daypart," said Salinger. "The question is how we accommodate our new [syndication] acquisitions with the new NBC daytime product coming down the pipe. That is still undecided."

NBC is currently developing a slate of reality programs for daytime, the first of which was announced last week (see page 13).

Tribune's Sifford reports that *Now it Can be Told* has been sold to about 13 network affiliates, covering some 20% of the country. "This is the toughest year for selling programs in the 20 years I've been in the business," Sifford said. But with persistence and some flexiblity in meeting station needs, he said, "I think we'll prevail."

Other stations clearing the program to date are WJBK-TV Detroit, WJW-TV Cleveland, WTVJ-TV Miami, KTVI-TV St. Louis, WTNH-TV Hartford, KUSI-TV San Diego, KATU-TV Portland, WITI-TV Milwaukee and WSYX-TV Columbus, Ohio. **SMR**

TRACKING THE ELUSIVE BARTER SPOT

Warner Bros. test of monitoring services ends with distributor "leaning" toward Advertising Verification Inc. offering

Verification of national barter advertising spots and the development of standard procedures for monitoring stations' compliance in airing national commercials has been a hot topic of debate among syndicators and advertisers.

At the end of November, Warner Bros. Domestic Television Distribution completed a test of competing verification systems from Broadcast Data Systems (BDS) and Advertising Verification Inc. (AVI). According to Chip Aycock, director of domestic distribution and clearance validation for Warner Bros., "they [AVI] have offered us a contract deal memo, and we're leaning toward signing with AVI Technologies."

As one of the largest distributors of off-network and first-run series programing, Warner Bros.'s choice of either system would represent a major boost. Already in existence is Nielsen Media Research's AMOL detection system, and Arbitron has its planned Scan America (or BAR system), but executives from both companies did not return calls about the potentially competitive systems.

The real impetus for such a standard system comes from national advertisers, who in the past have complained that syndicators are unable to verify when and whether their commercial spots have been airing in a program or in its originally contracted time slot. Stations routinely upgrade or downgrade syndicated programs (depending on their ratings performance), but certain contracts specify that those stations are obligated to carry the national barter spots in the program's original time slot, whether or not the program is still there.

Syndicators have had the additional burden of finding a system that can quickly and accurately police local programers, who may feel justified in defying what they perceive as onerous barter contractual obligations, leaving some distributors to offer makegoods for delayed or unaired spots.

Aycock said the goal of the month-long test of BDS and AVI systems was to define which best provided "solid verifications that we are meeting our rating guarantees with national advertisers," on a "closer par" with what the broadcast networks have traditionally offered. According to Aycock, AVI's "active" system (which provided encoded audio signal data from New York, Los Angeles and Sacramento broadcast markets) came closer to meeting Warner Bros.' criteria—"pure" verifications, identification of the advertiser's spot, the syndicated program in which it was running and the time slot in which the spot aired—than did BDS's "passive" system.

BDS Vice President Terry Meacock countered that his system "gave them [Warner Bros.] data of when the commercials aired and in what program. I can pinpoint those commercials, but I don't yet have the computer programed to verify whether the commercial was a local, national or network buy. As part of this phased introduction period, I'm letting them see the basic technology and then fine tuning it for each of the individual market's needs. I will give Warner Brothers what they need."

Leon Luxenberg, senior vice president, administration, for Warner Bros., confirmed that the company is negotiating with AVI, but added that "nothing has been finalized." He also suggested that the Advertiser Supported Television Assocation could convene a meeting of distributors to "discuss which system is most beneficial to distributors and advertisers."

Patented in 1988 by engineer Robert Kramer, the AVI system encodes commercials with a low decibel (db) audio signal that is not audible to the human ear. Computer readers (computer soft-

Kramer

Luxenberg

ware and hardware) are placed in each market—either tapped into a cable operator's headend system or straight from broadcast antenna signals—where the data is fed back via modem to the individual syndicator's or advertiser's own computer database.

BDS, on the other hand, uses a passive system that does not involve individual physical tape encryption but is rather a pattern recognition system that is able to "fingerprint" computer coded commercials. The company, which is based in New York and owned by Billboard Publications Inc., publishers of *Billboard*, *Adweek* and *The Hollywood Reporter*, has been offering a similiar service in over 75 radio markets and announced plans four months ago to serve TV markets. However, Warner Bros.' Aycock said the test was limited to 40 of those markets.

While Aycock said that AVI and BDS are "not quite yet there technically," he said that AVI was better at identifying commercials and the number of "spins" (time slots other than the original slot contracted). "The test results for BDS were all right for which programs ran in the 40 markets, but it was unable to track spots outside its time period and program," Aycock said. "AVI currently provides the most accurate information. They can turn it over in less than 24 hours when I push them."

However, Aycock and Luxenberg expressed some reservations about Kramer's ability to implement the system nationally without some additional financial backing. Sources estimated that it could take a $7 million-$10 million first-year investment to get the system "up" in 200-plus ADI markets. Luxenberg said that although negotiations have been ongoing with AVI, a concensus among syndicators and advertisers should supersede any deal for AVI's system. Kramer said that if he can get one or two syndicators to subscribe (he would not discuss potential fees), AVI has computer hardware and software ready for implementation in the top 20 ADI markets (44% coverage). Aycock said he would rather see AVI start out with 80% U.S. coverage.

"If you asked us today, I would have to say that we probably don't have enough money," said Kramer, who declined to identify his "other" backers. "If we don't have the clients signed, then we can't go. If we get full-scale support from the studios, we can have this system fully operational nationally and data available daily within an hour of the program's local airing."

One syndication source, who wished to remain anonymous, indicated that Nielsen may be in the midst of talks with AVI about using its proprietary technology to possibly augment or replace Nielsen's AMOL system. Nielsen currently includes the cost of AMOL into its regular ratings subscription service. Warner's Aycock and Camelot's Leon credited AMOL with 95% accuracy, but the video encryption is laid down on line 20 and 22 of the vertical interval, which both executives said can be "blanked out" or "stripped" by station engineers receiving the program's satellite signal.

"I think Nielsen realizes that AVI and Kramer have built a better mousetrap," said the source. "It's probably a matter of time before Arbitron also goes after AVI or BDS."

As for possible industry trade association endorsements, Advertiser-Supported Television Association (ASTA) Director Tim Duncan and Association of National Advertisers' (ANA) senior vice president, Peter Eder, and chairman of the advertising committee, Dick Bruder (also general counsel for Procter & Gamble), said their organizations would refrain from pushing for an industry standard, but rather let the free market dictate which is the best format. Duncan qualified ASTA's position by suggesting that his barter association would instead "present options" to syndicators and advertisers and offer their own summaries. -MF

PUBLIC TV REP SIGNS NEW CLIENTS

Public Broadcast Marketing, an unwired network that places corporate messages exclusively on public television outlets, has added the New Jersey Network and Nebraska Public Television to its list of clients.

With the latest additions, the four-year-old company now represents 60 public TV stations with 62% coverage of the country. Participating public TV stations, primarily located in the top 50 markets, include WTTW(TV) Chicago, KERA-TV Dallas, WLIW(TV) Garden City (New York), N.Y. and KUHT(TV) Houston.

Virtually all public TV stations now accept corporate messages, but many are still adjusting to the concept of working with a rep firm, according to Keith Thompson, president of the New York-based company.

Thompson started PBM with eight stations in August 1986, two years after the FCC changed noncommercial TV guidelines to allow for enhanced corporate underwriting. Prior to 1984, corporate sponsorship essentially took the form of on-air acknowledgments which offered little room for elaboration.

"Before, we had white letters on a blue background," said Thompson. "Now, we can show moving cars." Participating corporations in recent years have included Mitsubishi, Kraft Foods, MCI Communications Corp. and several other top companies.

Thompson's assertion to advertisers is that noncommercial TV offers a "pristine environment" averaging about 300 messages per week, versus about 5,000 per week for commercial broadcast and cable outlets. FCC guidelines allow for breaks of 2½ minutes or less with a maximum two breaks each hour, and PBM generally makes available one minute per hour to regional and national corporate accounts.

Participating corporations generally pay an average unit cost of about $17,000 in prime time, said Thompson, although some spots on certain stations are priced at less than half that figure. With 60% coverage of the U.S., PBM's full lineup of public TV stations reaches an average household audience of about 1.7 million, he said.

Corporations working with PBM can promote themselves not only through selected public TV stations, but also through programing guides sent out by those stations. Viewer guides published by the various PBM stations have a collective readership of about 2 million homes, said Thompson.

Working through PBM also allows corporations an opportunity to reach viewers through the participating public TV station's mailing list. Public TV stations virtually never sell their mailing lists, said Thompson, but do allow corporations, through PBM, to use their lists to announce participation as station sponsors. Yet another way that corporations work through PBM is in sponsoring sporting events and other activities held by public TV stations.

PBM expansion plans call for a comparable service for public radio, said Thompson. The company is also preparing a series of management seminars for public TV broadcasters, which will educate stations on a number of topics, including advertising, audience research and computer technology. -RB

CERTIFICATE OF SERVICE

I, Kimberly A. Smith, a secretary in the law firm of Gardner, Carton & Douglas, hereby certify that copies of the foregoing "Opposition to Petition for Rulemaking and Motion to Dismiss" were served this 13th day of February, 1991, by hand and/or first class mail postage prepaid on the following:

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